

U.S. DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
SAN ANTONIO, TEXAS
FILED
OCT 1 2003
CLERK, U.S. DISTRICT COURT
By _____
Deputy

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JOINT PROPOSAL FOR CONTENTS OF SCHEDULING AND DISCOVERY ORDER

Defendant believes that the interests of all parties would be best served by an agreement to

JOINT PROPOSED SCHEDULING AND TRIAL ORDER, page 1

dismiss this action with both parties to bear their own costs and attorney's fees. Defendant proposed, but plaintiffs rejected, this as a means of resolving this litigation. Defendant does not agree with plaintiffs' characterization of the conduct and progress of settlement negotiations as discussed by plaintiffs above. Nevertheless, defendant remains open to further discussions to resolve this litigation through voluntary means.

II ***Proposed Schedule.***

1. Motions to amend and for leave to join other parties: November 15, 2003.
2.
 - a. Discovery motion cut-off date for all parties: March 1, 2004.
 - b. Dispositive motion cut-off date: March 1, 2004.
3. Discovery cut-off date for all parties: February 20, 2004.
4. Limitations on discovery:
 - a. Each side will file no more than one initial and one follow-up set of interrogatories, requests for production of documents, and requests for admissions.
 - b. No depositions will be taken.
5. Expert Witnesses:
 - a. Plaintiffs shall designate any expert witness(es) by January 5, 2004.
 - b. Defendant shall designate any expert witness(es) by January 10, 2004.
 - c. In the event plaintiffs designate no expert witness(es), but defendant designates expert witness(es), plaintiffs shall designate any expert witness(es) by January 15, 2004.
6. Trial:
 - a. Trial date: July 6, 2004.
 - b. Number of trial days: 6 days.
 - c. Jury demand: Yes.
7. Settlement negotiations to commence: Settlement was discussed at the parties' October 1, 2003 meeting. See status report in Part I, *supra*.

8. Consent to trial before United States Magistrate Judge William F. Sanderson, Jr.:
Plaintiffs: Yes.
Defendant: No.
9. Mediation or arbitration:
 - a. Plaintiffs would submit to mediation by a voluntary unpaid neutral, but decline to submit to paid mediation or arbitration. Defendant declines to submit to any form of either arbitration or mediation.
 - b. Explanation: Plaintiffs object to the burdensome cost of such proceedings. Defendant does not believe the case is susceptible to mediation or arbitration.
10. Other scheduling or discovery proposals that the parties believe will facilitate expeditious and orderly preparation for trial:

Plaintiffs' Statement:

Plaintiffs have moved for a stay of trial proceedings pending determination of their interlocutory appeal from this Court's order denying their motion and renewed motion for preliminary injunction, for the following reasons:

- a. Given this Court's analysis of the merits of plaintiffs' claims, the continuing prosecution of this lawsuit is futile unless plaintiffs prevail on appeal. Plaintiffs will move for voluntary dismissal of their claims if they cannot prevail before the Court of Appeals. The interests of judicial economy warrant the requested stay.
- b. Additional considerations of judicial economy further warrant delaying trial until after the Court of Appeals determines the merits of plaintiffs' appeal: (1) The likelihood of settlement will be substantially enhanced if plaintiffs prevail on appeal; and (2) If plaintiffs are compelled to present their case to a jury on jury instructions that the Court of Appeals later finds to be erroneous, all parties and this Court will be subjected needlessly to two trials. An interlocutory appeal will unburden all involved of the risk of two trials.
- c. As a practical matter, it is likely that the decision of the Court of Appeals may well be

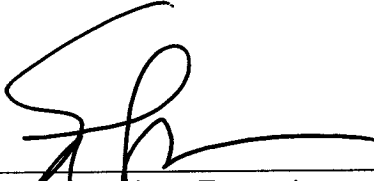
the last word in this matter. As of the date of filing this Proposed Order, plaintiffs will have served nearly half of their one-year disciplinary term, and it is likely that little meaningful portion of their disciplinary term will remain by the time the Court of Appeals issues a determination on the merits.

Defendant's Statement:

Defendant opposes plaintiffs' motion to stay the District Court proceedings pending a decision by the Fifth Circuit on plaintiffs' interlocutory appeal of this Court's September 11, 2003 "Order Denying Preliminary Injunction." For reasons that will be set forth in greater detail in defendant's response, defendant believes that the resolution of this case should not be delayed awaiting the Fifth Circuit's decision on plaintiffs' interlocutory appeal.

11. Other matters relevant to the status and disposition of this case: See ¶ 10, *supra*.

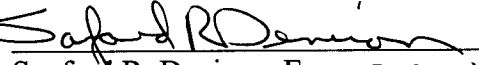
Respectfully submitted,


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Dated: October 15, 2003


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